

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CURTIS T. BELL,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-491-SLR
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	

Curtis T. Bell, Delaware Correctional Center, Smyrna, Delaware.
Petitioner, pro se.

Thomas E. Brown, Esquire, Delaware Department of Justice,
Wilmington, Delaware.
Counsel for Respondents.

MEMORANDUM OPINION

Dated: June 4, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Curtis T. Bell is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2) For the reasons that follow, the court concludes that petitioner's application is time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1). Accordingly, the court will dismiss the petition as untimely.

II. BACKGROUND

On October 10, 1996, a jury in the Delaware Superior Court found petitioner guilty of second degree burglary, theft, criminal mischief, and conspiracy. The charges were based on the June 27, 1995 burglary of an apartment in Wilmington. The Superior Court sentenced petitioner as a habitual offender on May 23, 1997, to eight years in prison followed by two years of decreasing levels of supervision. The Delaware Supreme Court affirmed. Bell v. State, No. 251, 1997, 1997 WL 788735 (Del. Dec. 18, 1997).

On June 12, 1998, petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court summarily dismissed the motion because the claims presented therein were wholly conclusory. State v. Bell, No. 9507007636,

1998 WL 1029249 (Del. Super. Ct. Aug. 31, 1998). The Delaware Supreme Court affirmed. Bell v. State, No. 432, 1998, 1999 WL 486892 (Del. May 13, 1999).

Petitioner then filed in this court his first application for federal habeas relief on August 31, 1999. At petitioner's request, the court dismissed the petition without prejudice. Bell v. Attorney General, Civ. A. No. 00-54-SLR (D. Del. Aug. 28, 2000).

Petitioner has now filed the current application for federal habeas relief. In his application, petitioner alleges: (1) that the Superior Court erred by admitting hearsay evidence at his trial; (2) insufficiency of the evidence; (3) ineffective assistance of counsel; and (4) a denial of his right to due process in his state postconviction proceedings. (D.I. 2) Respondents assert that the petition is subject to a one-year period of limitation that expired before petitioner filed it, and ask the court to dismiss it as time barred.

III. DISCUSSION

A. One-Year Period of Limitation

In the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Congress amended the federal habeas statute by prescribing a one-year period of limitation for the filing of habeas petitions by state prisoners. Stokes v. District Attorney of County of Philadelphia, 247 F.3d 539, 541 (3d Cir.), cert.

denied, 122 S. Ct. 364 (2001). Effective April 24, 1996, the AEDPA provides:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review . . .

28 U.S.C. § 2244(d) (1).

As described above, the Delaware Supreme Court affirmed petitioner's conviction and sentence on December 18, 1997. Petitioner was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. See Sup. Ct. R. 13.1. Although petitioner did not petition the United States Supreme Court for a writ of certiorari, the ninety-day period in which he could have filed such a petition is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d) (1) (A). See Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (holding that on direct review, the limitation period begins to run at the expiration of the time for seeking review in the United States Supreme Court). Therefore, petitioner's conviction became final on March 18, 1998, ninety days after the Delaware Supreme Court affirmed his sentence.

The court's docket reflects that the current petition was

filed on July 18, 2001. (D.I. 2) A pro se prisoner's habeas petition, however, is deemed filed on the date he delivers it to prison officials for mailing to the district court, not on the date the district court docket it. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Here, petitioner certifies that he deposited his petition, addressed to the clerk of this court, in the prison mail system on June 25, 2001. (D.I. 2) The court thus deems his petition filed on June 25, 2001.

In short, the one-year period of limitation began running when petitioner's conviction became final on March 18, 1998. His habeas petition was filed more than three years later on June 25, 2001. That, however, does not end the timeliness inquiry, because the one-year period is subject to statutory and equitable tolling. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

B. Statutory Tolling

The AEDPA provides for statutory tolling of the one-year period of limitation as follows:

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2).

Here, petitioner filed a motion for postconviction relief in the Superior Court on June 12, 1998. On May 13, 1999, the Delaware Supreme Court affirmed the Superior Court's order

denying postconviction relief. Respondents acknowledge, and correctly so, that the one-year period was tolled while petitioner's postconviction motion was pending. The court thus finds that the period of time from June 12, 1998, through May 13, 1999, is excluded from the one-year period of limitation.

Petitioner also filed a prior federal habeas petition on August 31, 1999, which the court dismissed without prejudice on August 28, 2000. Respondents correctly point out that the United States Supreme Court has ruled that the filing of a prior federal habeas petition does not toll the one-year period under § 2244(d)(2). See Duncan v. Walker, 533 U.S. 167, 172 (2001) (holding that properly filed federal habeas petition does not statutorily toll the one-year period of limitation). The court thus concludes that the period of time during which petitioner's prior federal habeas petition was pending cannot be excluded under § 2244(d)(2).

Based on the foregoing, the court finds that more than one year lapsed during which no postconviction proceedings were pending in the state courts. First, from March 18, 1998 (the date petitioner's conviction became final) through June 12, 1998, (the date he filed his motion for postconviction relief), a period of 85 days lapsed during which no postconviction proceedings were pending. After the conclusion of petitioner's postconviction proceedings on May 13, 1999, more than two

additional years lapsed before petitioner filed the current application for federal habeas relief on June 25, 2001.

In sum, notwithstanding the application of the statutory tolling provision, at least two years and 85 days lapsed during which no postconviction proceedings were pending in the state courts. For this reason, the court concludes that the statutory tolling provision does not render the petition timely filed.

C. Equitable Tolling

Additionally, the one-year period of limitation may be equitably tolled. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S. Ct. 323 (2001); Jones, 195 F.3d at 159; Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998). The doctrine of equitable tolling applies:

only when the principles of equity would make the rigid application of a limitation period unfair. Generally, this will occur when the petitioner has in some extraordinary way been prevented from asserting his or her rights. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing [the] claims. Mere excusable neglect is not sufficient.

Miller, 145 F.3d at 618-19 (citations omitted). In other words, equitable tolling "may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Jones, 195 F.3d at 159 (quoting United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998)).

In the instant case, petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his petition with this court in a timely manner. Indeed, he has failed to offer any explanation for the delay. Moreover, the court has independently reviewed the record, and can discern no extraordinary circumstances that warrant applying equitable tolling.¹ Accordingly, the court will dismiss the petition as time barred.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v.

¹ In reaching this conclusion, the court is mindful that Duncan left open the possibility that the one-year period may be equitably tolled while a prior federal habeas petition was pending. Duncan, 533 U.S. at 183-84 (Stevens, J., concurring). Here, even if the one-year period were equitably tolled while petitioner's prior federal habeas petition was pending, his current application would still be untimely.

McDaniel, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id.

As explained above, the court has concluded that petitioner's application is time barred, and that neither the statutory tolling provision nor the doctrine of equitable tolling renders the petition timely. The court is persuaded that reasonable jurists would not debate the correctness of these conclusions. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

V. CONCLUSION

For the reasons stated, the court will dismiss petitioner's application for a writ of habeas corpus, and will not issue a certificate of appealability. An appropriate order shall issue.

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O R D E R

At Wilmington, this 4th day of June, 2002, consistent with
the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Curtis T. Bell's petition for a writ of
habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed, and the
relief requested therein is denied.

2. The court declines to issue a certificate of
appealability for failure to satisfy the standard set forth in 28
U.S.C. § 2253(c)(2).

Sue L. Robinson
United States District Judge